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Sec. 52-14. Fuel-energy tax.

- (a) There is hereby levied and imposed a tax upon every person transmitting, distributing, manufacturing, producing or supplying electricity, gas, steam, coal, fuel oil or liquefied petroleum gas in the county, after July 1, 1975, at the following rates in dollars:

Electricity	\$0.0010404	per kilowatt hour
Gas	\$0.0093864	per therm
Steam	\$0.011736	per therm
Coal	\$2.436	per ton
Fuel Oil		
No. 1	\$0.01284	per gallon
No. 2	\$0.01332	per gallon
No. 3	\$0.01332	per gallon
No. 4	\$0.013632	per gallon
No. 5	\$0.013896	per gallon
No. 6	\$0.014208	per gallon
Liquefied petroleum gas	\$0.002028	per pound

The council may by resolution adopted after advertisement and a public hearing made and held in accordance with the provisions of subsection (c) of section 52-17, from time to time, revise, amend, increase or decrease the foregoing rates. The rates or any revisions, amendments, increases or decreases are and shall be based on weight or unit of measure regularly used by such persons in the conduct of their business and are and shall be intended to be in such amounts as will impose an equal or substantially equal tax upon the units of energy transmitted, distributed, manufactured, produced or supplied by different persons or classes of persons. The tax shall not apply to the transmission or

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distribution of electricity, gas, steam, coal, fuel oil or liquefied petroleum gas in interstate commerce through the county, which are excluded from the taxing power of the county, under the Constitution of the United States. The tax shall not be imposed when the fuels or energies are used to convert to another form of energy which will become subject to tax. The tax shall not be imposed at more than one (1) point in the transmission, distribution, manufacture, production or supply system. The rates of tax shall be applied to the quantities measured at the point of delivery for final consumption within the county.

- (b) *Person* as used herein shall mean any individual, corporation, company, association, firm co-partnership, or any group of individuals acting as a unit, and includes any trustee, receiver, assignee or personal representative thereof.
- (c) Every person transmitting, distributing, manufacturing, producing or supplying fuel or energy listed herein within the county shall pay the tax and shall report, upon such forms and set forth such information as the director of finance may prescribe. Such report and payment of said tax shall be made on or before the fifteenth day of each month, covering the immediate preceding calendar month. Any person transmitting, distributing, manufacturing, producing or supplying energy or fuel regularly throughout the year may, upon written application to, and with the consent of, the director of finance, make reports and remittances on a quarterly basis in lieu of the monthly basis hereinbefore provided. Such quarterly reports and remittances shall be made on or before the fifteenth day of April, July, October and January in each year, and shall cover the three (3) months immediately preceding the months in which reports and remittances are required.
- (d) If any person shall fail or refuse to remit the tax required to be paid hereunder or to make a proper return to the director of finance within the time and in the amount specified herein, he shall be liable for interest on the amount of tax due at the rate of one-half of one (1) percent per month on the amount of the tax for each month or portion thereof from the date upon which the tax is due as provided herein, and shall also be liable for a penalty of ten (10) percent of the amount of the tax, and such interest and penalty shall be collected as a part of the tax.
- (e) If any person shall fail or refuse to make any report and remittance required herein, within the time provided herein, the director of finance shall proceed in such manner as he may deem necessary to obtain facts and information on which to base his estimate of the tax due. As soon as the director of finance shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make such report and remittance, he shall proceed to determine and assess against such person the tax and penalties provided for herein and shall notify such person by mail sent to his last known place of address of the total amount of such tax, interest and penalties, and the total amount thereof shall be payable within ten (10) days from the date of such notice.

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- (f) It shall be the duty of every person liable for the payment to the county of any tax imposed herein to keep and preserve, for a period of two (2) years, such suitable records as may be necessary to determine the amount of such tax as he may have been liable for the county, which records the director of finance shall have the right to inspect at all reasonable times.
- (g) Whenever any person required to pay to the county a tax hereunder shall cease doing business or otherwise dispose of his business, any tax payable hereunder to the county shall become immediately due and payable and such person shall immediately make a report and pay any tax due.
- (h) Any person violating or failing to comply with any of the provisions of this section shall be subject to punishment for a class A violation as set forth in section 1-19 of chapter 1 of the County Code. Each violation shall constitute a separate offense. Such conviction shall not relieve any such person from the payment, or remittance of such tax. (1971 L.M.C., ch. 52, ~ 1; Res. No. 8-238; 1983 L.M.C., ch. 22, ~ 56.)

Sec. 52-15. Telephone tax.

- (a) (1) A person who owns a telephone line for the reception, transmission or communication of messages by telephone, or leases, licenses, or sells telephonic communication in the County must pay a tax on the following services furnished to customers with a billing address or fixed service address in the County:
 - (A) each residence, business, or PBX local exchange access line or trunk line (except telephone lifeline service customers);
 - (B) each wireless telephone line; and
 - (C) each Centrex local exchange access line or trunk line.
- (2) The Council must by resolution adopted after advertisement and public hearing in accordance with Section 52-17(c) set the monthly tax rate for each type of line listed in paragraph (1). A person subject to the tax imposed under this section must pay a tax equal to the sum of each line multiplied by the tax rate for that line.
- (b) In this section:
 - (1) *Line* means a connection to the local telephone exchange through a unique telephone number.

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- (2) *Person* means any individual, corporation, company, association, firm, or co-partnership, or any group of individuals acting as a unit, and includes any trustee, receiver, assignee or personal representative.
- (3) *Wireless telephone* means any equipment or instrument that transmits:
 - (A) cellular telephone service;
 - (B) personal communication service; or
 - (C) any other commercial mobile radio service as defined by the Federal Communications Commission.
- (c) Every person liable for the tax must pay the tax and must report upon such forms and set forth such information as the director of finance may prescribe. The report and payment of the tax must be made on or before the fifteenth day of each month, covering the immediate preceding calendar month. Any person liable for the tax may, upon written application to and with the consent of the Director of Finance, make reports and remittances on a quarterly basis instead of the monthly basis. Quarterly reports and remittance must be made on or before the fifteenth day of April, July, October and January in each year, and must cover the three (3) immediately preceding months.
- (d) If any person fails or refuses to remit the tax required to be paid or to make a proper return to the director of finance, within the time and in the amount specified, that person is liable for:
 - (1) Interest on the amount of tax due at the rate of one (1) percent per month for each month or part of a month after the date upon which the tax is due; and
 - (2) A penalty of five (5) percent of the amount of the tax per month or part of a month, not to exceed a total of twenty-five (25) percent of the tax. The interest and penalty is collected as a part of the tax.
- (e) If any person fails or refuses to make any report and remittance required within the time provided, the Director of Finance must obtain information on which to base the Director's estimate of the tax due. As soon as the Director obtains sufficient information upon which to base the assessment of any tax due, the Director must assess against the person the tax and penalties. The Director must notify the person by mail sent to the person's last-known place of address of the total amount of the tax, interest and penalties. The total amount is payable within (10) days after the date of the notice.

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- (f) Every person liable for the payment of any tax must keep and preserve, for two (2) years, suitable records necessary to determine the amount of the tax as that person may have been liable for to the County. The Director of Finance may inspect the records at all reasonable times.
- (g) Whenever any person subject to tax stops doing business or otherwise disposes of the business, any tax payable to the County is immediately due and payable and the person must immediately make a report and pay any tax due.
- (h) A person is entitled to a refund, under procedures in State law, of the tax paid on any wireless telephone line billed to an address in the County for wireless telephone service that is not available in the County.
- (i) Any violation or failure to comply with this section is a class A violation. Each violation is a separate offense. A conviction does not relieve any person from the payment, collection or remittance of the tax. (1971 L.M.C., ch. 51, ~ 1, 2; Res. No. 8-239; 1983 L.M.C., ch. 22, ~ 56; 1989 L.M.C., ch. 18, ~ 1; Res. No. 12-193; 1996 L.M.C., ch. 17, ~ 2.)

Editor's note – Section 1 of 1989 L.M.C., ch. 18, amended ~ 52-15 in its entirety. Section 2 of the act reads as follows: *Sec. 2. Rate of Tax.* The rate of the tax levied under section 52-15 from January 1, 1984 until the effective date of this act (January 23, 1989) is 62 cents per month on each residence, business or PBX local exchange access line or trunk line furnished to customers within the County, and 6.2 cents per month on each Centrex local exchange access line or trunk line furnished to customers within the County.

Resolution No. 12-193, adopted May 8, 1991, effective May 1, 1991, amended the rates of the telephone tax levied under Section 52-15 as follows: \$1.25 per month on each residence, business or PBX local exchange access line or trunk line furnished to customers (except telephone lifeline services customers) in the County; and 12.5 cents per month on each Centrex local exchange access line or trunk line furnished to customers in the County. This resolution expired on June 30, 1995.

Sec. 52-16. Room rental and transient tax.

- (a) (1) There is levied and imposed on each and every transient a tax at the rate of 5 percent of the total amount paid for room rental, by or for the transient, to any hotel or motel for sleeping accommodations.
- (2) The County Council by resolution, after a public hearing advertised under Section 52-17(c), may increase or decrease the rate of this tax.

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- (b) The following words and phrases when used in this section have the following meanings:
- (1) *Transient*: Any person who for any period of not more than 30 consecutive days actually occupies sleeping accommodations in any hotel or motel providing sleeping accommodations for which a charge is made.
 - (2) *Person*: A human being. "Person" does not include corporations, firms, associations, partnerships, companies, government bodies or agencies and other artificial persons.
 - (3) *Hotel or motel*: Any public or private hotel, inn, hostelry, tourist home or house, motel, apartment hotel, rooming house or other lodging place within Montgomery County, offering sleeping accommodations for five (5) or more persons at any one time, that for compensation furnishes sleeping accommodations to any transient as defined in paragraph (1) of this subsection. "Hotel" or "motel" includes the owner or operator of the hotel or motel.
 - (4) *Room rental*: The total charge made by any hotel or motel for sleeping accommodations or space furnished any transient. If the charge made by a hotel or motel includes any charge for services or accommodations in addition to that for the use of sleeping space, then the portion of the total charge as represents only room rental shall be distinctly set out and billed by the hotel or motel as a separate item.
 - (5) *Director*: Director of finance or designee.
- (c) Every hotel or motel receiving any payment for room rental with respect to which tax is levied shall collect the amount of tax imposed by this section at the time payment for the room rental is made. The taxes required to be collected by this section shall be deemed to be held in trust by the hotel or motel required to collect the tax until remitted as required by this section.
- (d) The hotel or motel collecting the tax shall submit a report upon the forms and set forth the information as the director may prescribe and require, showing the amount of room rental charges collected, and the tax required to be collected, and shall sign and deliver the same to the director with a remittance of the tax. The reports and remittances shall be made on or before the last day of each month covering the amount of tax collected during the preceding month. Any hotel or motel operating regularly throughout the year may make written application to the director to make reports and remittances on a quarterly basis in lieu of the monthly basis provided by this subsection. The approval or disapproval of the application is in the sole discretion of the director. The quarterly

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reports and remittances shall be made on or before the last days of April, July, October and January in each year, and shall cover the amounts collected during the three (3) months immediately preceding the months in which the reports and remittances are required.

- (e) If any hotel or motel shall fail or refuse to remit to the director the tax required to be collected and paid by this section or to make a proper report to the director, within the time and in the amount specified by this section, there shall be added to the tax by the director interest at the rate of one (1) percent per month on the amount of the tax for each month or portion of a month from the date upon which the tax is due, and there shall be added to the tax by the director a penalty of five (5) percent of the amount of the tax per month or portion of a month, not to exceed a total of twenty-five (25) percent of the tax.
- (f) If any hotel or motel shall fail or refuse to collect the tax and to make, within the time provided by this section, any report and remittance required by this section, the director shall proceed in a manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the director shall procure the facts and information as the director is able to obtain upon which to base the assessment of any tax payable by any hotel or motel that has failed or refused to collect the same and to make the report and remittance, the director shall proceed to determine and assess against the hotel or motel the tax and penalties provided for by this section and shall notify the hotel or motel by mail sent to its last known place of address of the total amount of the tax and interest and penalties, and that total amount shall be payable within ten (10) days from the date of the notice.
- (g) It shall be the duty of every hotel or motel liable for the collection and payment to the county of any tax imposed by this section to keep and preserve, for a period of three (3) years, the suitable records as may be necessary to determine the amount of the tax as the hotel or motel may have been liable for the collection of and payment to the county, which records the director shall have the right to inspect at all reasonable times.
- (h) Whenever any hotel or motel required to collect and pay to the county a tax by this section shall cease doing business or otherwise dispose of its business, any tax payable under this section to the county shall become immediately due and payable and the hotel or motel shall immediately make a report and pay the tax due.
- (i) No tax shall be payable under this section on a room rental:
 - (1) In any hospital, medical clinic, nursing home, rest home, convalescent home, or home for aged persons;

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- (2) From a private nonprofit educational organization that:
 - a. Is not organized or operated for the purpose of carrying on or promoting a trade, business, or religious philosophy; but
 - b. Principally houses groups of young people exclusively for the purpose of developing leadership and citizenship skills and promotion of the general public welfare; or
- (3) From a nonprofit charitable, religious, educational, recreational or literary organization, other than a country club, when the primary use of the facility is other than housing overnight guests.
- (j) It shall be the duty of the director to ascertain the name of every hotel or motel providing sleeping accommodations in Montgomery County, liable for the collection of the tax levied under this section that fails, refuses or neglects to collect the tax or to make, within the time provided by this section, the reports or remittances required by this section.
- (k) Any hotel or motel or transient violating or failing to comply with any of the provisions of this section shall be subject to punishment for a class A violation as set forth in section 1-19 of chapter 1 of the County Code. Each violation shall constitute a separate offense. A conviction shall not relieve any hotel or motel or transient from the payment, collection or remittance of the tax.
- (l) At least 3.5% of the revenue from the tax levied under this Section must be used for the Conference and Visitors Bureau, Inc. as designated by the Council in a budget resolution to promote travel to the County. The County Executive must report to the Council on the use of these funds by March 15 each year. (1981 L.M.C., ch. 49, ~ 1; 1975 L.M.C., ch. 38, ~ 1; 1983 L.M.C., ch. 22, ~ 56; 1984 L.M.C., ch. 38, ~1; 1987 L.M.C., ~ 24, ~ 1; CY 1991 L.M.C., ch. 11, ~1 and 4; CY 1991 L.M.C., ch. 25, ~ 1; 1994 L.M.C., ch. 7, ~ 1.)

Editor's note – 1984 L.M.C., ch. 38, ~ 3 provides as follows: *Sec. 3. This Act shall apply to:*

- (a) All taxes paid within three years prior to the effective date of this Act.
- (b) All taxes due and/or assessable for periods within four years prior to the effective date of this Act.
- (c) All taxes due, payable, billed or assessed where legal action has been instituted and is pending on the effective date of this Act.

The U.S. Court of Appeals upheld the constitutionality of this statute in United States v. Montgomery County, 761 F.2d 998 (4th Cir. 1985).